

## Federal Election Commission

## § 114.15

or otherwise provide funds, the purpose of which is to pay for an electioneering communication that is not permissible under 11 CFR 114.15, to any other person.

(2) A corporation or labor organization shall be deemed to have given, disbursed, donated, or otherwise provided funds under paragraph (a)(1) of this section if the corporation or labor organization knows, has reason to know, or willfully blinds itself to the fact, that the person to whom the funds are given, disbursed, donated, or otherwise provided, intended to use them to pay for such an electioneering communication.

(b) Persons who accept funds given, disbursed, donated or otherwise provided by a corporation or labor organization shall not:

(1) Use those funds to pay for any electioneering communication that is not permissible under 11 CFR 114.15; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication that is not permissible under 11 CFR 114.15.

(c) The prohibitions at paragraphs (a) and (b) of this section shall not apply to funds disbursed by a corporation or labor organization, or received by a person, that constitute—

(1) Salary, royalties, or other income earned from bona fide employment or other contractual arrangements, including pension or other retirement income;

(2) Interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or

(3) Receipt of payments representing fair market value for goods provided or services rendered to a corporation or labor organization.

(d)(1) Persons other than corporations and labor organizations who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section, must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of any electioneering communication that is not permissible under 11 CFR 114.15.

(2)(i) Any person other than a corporation or labor organization who wishes to pay for electioneering communications permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided for the purpose of paying for such electioneering communications as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication permissible under 11 CFR 114.15 shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(ii) Any person, other than corporations that are not qualified nonprofit corporations and labor organizations, who wishes to pay for electioneering communications not permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall satisfy paragraph (d)(1) of this section. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

[67 FR 65212, Oct. 23, 2002, as amended at 72 FR 72913, Dec. 26, 2007]

### **§ 114.15 Permissible use of corporate and labor organization funds for certain electioneering communications.**

(a) *Permissible electioneering communications.* Corporations and labor organizations may make an electioneering communication, as defined in 11 CFR 100.29, to those outside the restricted

class unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

(b) *Safe harbor.* An electioneering communication is permissible under paragraph (a) of this section if it:

(1) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;

(2) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and

(3) Either:

(i) Focuses on a legislative, executive or judicial matter or issue; and

(A) Urges a candidate to take a particular position or action with respect to the matter or issue, or

(B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or

(ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, or such as attendance (for a fee) at a film exhibition or other event.

(c) *Rules of interpretation.* If an electioneering communication does not qualify for the safe harbor in paragraph (b) of this section, the Commission will consider whether the communication includes any indicia of express advocacy and whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

(1) A communication includes indicia of express advocacy if it:

(i) Mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or

(ii) Takes a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(2) Content that would support a determination that a communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate includes content that:

(i) Focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue; or

(ii) Proposes a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event; or

(iii) Includes a call to action or other appeal that interpreted in conjunction with the rest of the communication urges an action other than voting for or against or contributing to a clearly identified Federal candidate or political party.

(3) In interpreting a communication under paragraph (a) of this section, any doubt will be resolved in favor of permitting the communication.

(d) *Information permissibly considered.* In evaluating an electioneering communication under this section, the Commission may consider only the communication itself and basic background information that may be necessary to put the communication in context and which can be established with minimal, if any, discovery. Such information may include, for example, whether a named individual is a candidate for office or whether a communication describes a public policy issue.

(e) *Examples of communications.* A list of examples derived from prior Commission or judicial actions of communications that have been determined to be permissible and of communications that have been determined not to be permissible under paragraph (a) of this section is available on the Commission's Web site, <http://www.fec.gov>.

(f) *Reporting requirement.* Corporations and labor organizations that make electioneering communications under paragraph (a) of this section aggregating in excess of \$10,000 in a calendar year shall file statements as required by 11 CFR 104.20.

[72 FR 72914, Dec. 26, 2007]

## PART 115—FEDERAL CONTRACTORS

Sec.

115.1 Definitions.

115.2 Prohibition.